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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,401	04/11/2001	Roman S. Ferber	HOME 0459 PUS	3432

7590 03/30/2004
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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/833,401

Applicant(s)

FERBER ET AL.

Examiner

Fenn C Mathew

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

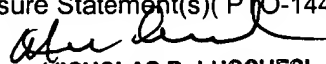
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


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" Applicant has argued for claims 1-13, that Haraga is not considered analogous art. Applicant has cited portions of In re Oetiker to support their claims to the impropriety of the Haraga device. This argument is not taken well. As cited by the applicant, In re Oetiker states in summary that a reference used must EITHER be in the field of the applicant's endeavor OR, IF NOT, then be reasonably pertinent to the particular problem with which the inventor was concerned. Examiner feels that the second requirement is fulfilled. In the present case, in the broadest light, Lin, Stern and Haraga are drawn to remote controlled hydromassage devices. Haraga is relied upon as it solves potential problems of a wired remote control, by substituting a wireless infrared remote control. As such, under the premise of In re Oetiker, Haraga is seen as analogous art.

With regards to claims 14-25, applicant has argued that Sandrin and Cook do not meet the claimed invention. Examiner pointed out in the previous Office Action portions of Sandrin citing hermetically sealed passages filled with air or water in order to cushion a user. Cook is relied upon as a secondary reference teaching an alternative cushioning material. The use of various materials for cushioning is well known in the art. Substitution of foam members for water or air in the hermetically sealed passages of Sandrin provide an alternative cushioning means. Furthermore, applicant has not distinguished in the claims, foam blocks thus Examiner is of the belief that substituting foam for the air or water of Sandrin will result in 'foam blocks'. As the passage is hermetically sealed, it is free from contact with the water used for massage.